

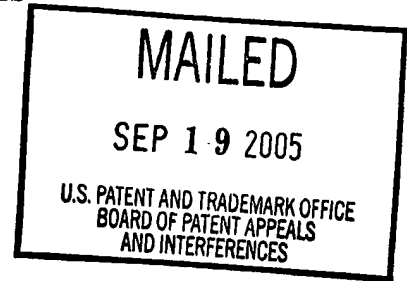
The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID H. HANES

Application No. 09/910,970



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on July 8, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

EXAMINER'S ANSWER

On August 26, 2004, an Examiner's Answer was mailed, responding to the Appeal Brief filed May 28, 2004. A clarification of the Examiner's Answer regarding the claims rejected under 35 USC § 103(a).

A Final Rejection was mailed January 2, 2004, wherein claims 8, 14 and 20 were rejected under 35 USC § 103(a). However, in the discussion that followed the rejection, the examiner includes claims 30 and 39 (see page 10, items 18, line 18). In the Examiner's Answer mailed August 26, 2004, claims 8, 14 and 20 were rejected under 35 USC § 103(a). However, in the discussion section entitled, "Response to Arguments" (page 5, line 1), the examiner includes 30. It is noted that claim 39 was cancelled in an Amendment dated April 30, 2004. Clarification as to the 103(a) rejection is required.

Further, it is noted that there is an inconsistency in the Examiner's Answer, mailed August 26, 2004, between the headings entitled Prior Art of Record and Grounds of Rejection. Under the heading Grounds of Rejection, the examiner relies on two references to sustain the final rejection(s) of the claim under 35 USC § 102(b) and 35 USC § 103(a), these two references are identified as Dettmer (5,812,732) and Nafeh (5,343,251). It is noted, however, these two references were not cited as being relied upon under the heading of Prior Art of Record. It should be noted that only references relied on to sustain the rejection(s) should appear under the heading Prior Art of Record.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the
examiner to:

- 1) vacate the Examiner's Answer dated August 26, 2004,
- 2) prepare a corrected Examiner's Answer clarifying the
examiner's intention regarding the 103(a) rejection as identified above;
- 3) for inclusion of the cited prior art, Dettmer (5,812,732) and Nafeh (5,343,251), under
the heading Prior Art of Record, and
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



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